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Negotiated Rulemaking Committee; Membership	Neb. Rev. Stat. §§ 84-924, 84-928, 84-909.01	008
Negotiated Rulemaking Committee; Operation	Neb. Rev. Stat. §§ 84-929, 84-909.01	009
Facilitators; Selection; Duties	Neb. Rev. Stat. §§ 84-930, 84-909.01	010
Negotiated Rulemaking Committee; Expenses	Neb. Rev. Stat. §§ 84-931, 84-909.01	011
Grants or Gifts	Neb. Rev. Stat. §§ 84-931, 84-909.01	012
Negotiated Rulemaking Committee; Termination	Neb. Rev. Stat. §§ 84-927, 84-909.01	013
Negotiated Rulemaking Committee; Judicial Review	Neb. Rev. Stat. §§ 84-932, 84-909.01	014

NEBRASKA ADMINISTRATIVE CODE

TITLE 70 - NEBRASKA COMMISSION
ON PUBLIC ADVOCACY

CHAPTER 15

CHAPTER 15 - PROCEDURES FOR
NEGOTIATED RULEMAKING

001 Negotiated Rulemaking Generally. The negotiated rulemaking process can be used by state agencies, whenever appropriate, to resolve controversial issues prior to the commencement of formal rulemaking. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act, but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. The negotiated rulemaking process does not preclude other agency efforts or processes designed to reach consensus with affected or interested persons concerning the content of rules or regulations. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by the agency as a result of a subsequent formal rulemaking process.

002 Definitions. For purposes of this chapter:

002.01 APA shall mean the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 through 84-920.

002.02 Agency shall mean the Nebraska Commission on Public Advocacy when it is authorized by law to make rules and regulations and is promulgating these procedural rules..

002.03 Agency director shall mean the chief officer in charge of the unit of state government which is promulgating these procedural rules. If appropriate, agency director shall mean the governing board or the commission of state government which is promulgating these procedural rules.

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002.04 Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition.

002.05 Convenor shall mean a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

002.06 Facilitator shall mean a person who impartially aids in the discussion and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decisionmaking authority.

002.07 Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

002.08 Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee.

002.09 Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

002.10 Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character.

002.11 Rule or regulation shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure, but not including rules and regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public and not including permits, certificates of public convenience and necessity, franchises, rate orders and rate tariffs, and any rules of

interpretation thereof, and for the purpose of the APA, every rule and regulation which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests.

003 Establishment of a Negotiated Rulemaking Committee; Criteria. An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:

003.01 There is a need for the rule.

003.02 There are a limited number of identifiable interests that will be significantly affected by the rule.

003.03 There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

003.03A Can adequately represent the interests identified; and

003.03B Are willing to negotiate in good faith to reach a consensus on the proposed rule.

003.04 There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.

003.05 The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the APA.

003.06 The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee.

003.07 The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis of the rule proposed by

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the agency in the formal rulemaking process of the APA.

004 Convenors; Selection; Duties. An agency, at the discretion of the agency director, may use the services of a convenor.

004.01 An agency may employ or contract for an organization or an individual to serve as a convenor, or may use the services of a state employee to act as a convenor. A convenor shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. An agency shall determine whether a person under consideration as a convenor has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

004.02 The convenor may assist the agency in making the determination of need for a negotiated rulemaking process discussed in section 003 above. The convenor may also assist the agency in:

004.02A Identifying persons who will be significantly affected by a proposed rule.

004.02B Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

004.03 The convenor shall report findings and make recommendations to the agency. Upon request of the agency, the convenor shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. That report by the convenor and any recommendations of the convenor shall be public records and made available to the public for review upon request.

005 Petitions for the Use of a Negotiated Rulemaking Committee. Any person may petition an agency to request the use of a negotiated rulemaking committee in the development or revision of a rule, as provided below.

005.01 A negotiated rulemaking process may be requested on any topic appropriate for a

rule or regulation by the agency.

005.01A A negotiated rulemaking process may be requested only to develop or revise rules which carry out statutes that are within the authority of the agency to implement.

005.01B A negotiated rulemaking process may not be requested to develop a rule or regulation to vary or change the specific terms of a statute.

005.01C A negotiated rulemaking process may not be requested to negotiate a rule on a matter which is not within the definition of a rule or regulation as set forth in subsection 002.11 above.

005.02 A request for the use of a negotiated rulemaking procedure shall be made by a petition that meets the requirements of form set out in this subsection. In the event that it does not, the agency may refuse to accept it.

005.02A A petition may be in the form of a pleading that contains a caption, heading, and name as set forth on Attachment 1.

005.02B A petition may be made in the form of a letter so long as the letter contains all of the information required by these regulations and is clearly delineated as a petition for negotiated rulemaking.

005.02C All petitions must be on white, letter-sized paper (8-1/2" x 11") of standard weight.

005.02D Petitions must be legible, and may be typewritten, photostatically reproduced, printed, or handwritten. If handwritten, petitions must be in ink. Only one side of a page of a petition shall contain any writing.

005.02E Any documents that are intended to accompany a petition shall be securely fastened, clearly marked as attachments to the petition, and meet the other

requirements of this section as to size, print and legibility.

005.03 A petition for a negotiated rulemaking procedure shall meet the following requirements for content and substance. In the event that it does not, the agency may refuse to accept it.

005.03A The petition must identify the general subject matter about which the negotiated rulemaking procedure is requested, including the statutes or legislative bill(s) which provide authority for the desired regulation, and, if amendments to existing regulations are sought, identification of the regulations by title, chapter and name.

005.03B The petition must identify the specific issue(s) proposed for inclusion in the negotiated rulemaking process.

005.03C The petition must discuss the facts surrounding each problem or issue proposed for inclusion in the negotiated rulemaking process.

005.03D The petition must discuss why a negotiated rulemaking process is in the public interest, including information on each of the criteria set out in subsections 003.01 through 003.05 above. The petition may also include information on the criteria included in subsections 003.06 and 003.07 above, to the extent such information is available to the petitioner. The petitioner may also submit such other information as may assist the agency in making a decision.

005.03E The petition must identify persons who will be significantly affected by any rule which might result from the proposed negotiated rulemaking process, to the extent known by the petitioner. The petitioner may also suggest the names of persons who are willing and qualified to represent the interests that will be significantly affected by the negotiated rulemaking process and the proposed rule.

005.04 A petition for a negotiated rulemaking process shall be filed with the agency director. Filing may be made by personal delivery during regular agency office hours or by

mail.

005.05 Upon the filing of a petition for a negotiated rulemaking procedure, the agency director may designate an agency employee or use the services of a convenor to recommend to the agency director whether a negotiated rulemaking process should be initiated.

005.06 Within 60 days after submission of a petition for a negotiated rulemaking procedure, the agency shall:

005.06A Deny the petition in writing, stating the reason(s) for the denial; or

005.06B Initiate the negotiated rulemaking process as provided in these rules.

005.07 The decision of the agency with respect to a petition for a negotiated rulemaking procedure may be made in the form of a pleading or a letter clearly designated as the decision on the petition. The petitioner shall be served with a copy of the agency's final decision by certified mail, return receipt requested.

005.08 A decision by the agency with respect to a petition for a negotiated rulemaking procedure is not subject to judicial review, although nothing herein shall bar a judicial review if such is otherwise provided by law.

006 Notice of a Negotiated Rulemaking Committee; Comment; Applications for Membership. If an agency decides to go forward with the establishment of a negotiated rulemaking committee, the agency shall proceed with the following process.

006.01 The agency shall give notice to the Secretary of State, publish notice in a newspaper having general circulation in the state, and, as appropriate, publish notice in other newspapers and publications. The notice shall include:

006.01A An announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule.

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006.01B A description of the subject and scope of the rule to be developed and the issues to be considered.

006.01C A list of interests likely to be significantly affected by the proposed rule.

006.01D A list of the persons proposed to represent the affected interests and the agency.

006.01E A proposed schedule for completing the work of the committee.

006.01F An explanation of how a person may apply for or nominate another person for membership on the committee.

006.02 Persons interested in making comments upon the formation of a particular proposed negotiated rulemaking committee shall have 30 days from the date of publication of the notice concerning that committee to do so. Such comments shall be in writing, and shall either be personally delivered to the agency or mailed to the agency at its business office.

006.03 Persons interested in applying for membership on a particular proposed negotiated rulemaking committee or in nominating other persons for such membership shall have 30 days from the date of publication of the notice concerning that committee to do so. Persons making application for membership or nominations for membership shall do so on Attachment 2, which shall be provided by the agency. Persons making application for membership or nominations for membership may also do so by letter, so long as the letter contains all of the information set out in Attachment 2 and is clearly delineated as an application or nomination for membership on a specific negotiated rulemaking committee.

007 Establishment of a Negotiated Rulemaking Committee; Procedure. After publication of notice and termination of the comment and membership application period, the agency will consider the comments and membership applications for a particular negotiated rulemaking committee and determine whether such a committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule, and whether such a committee is

feasible and appropriate in the particular rulemaking. In making the final determination as to creation of a negotiated rulemaking committee, the agency may use the services of a convenor as set out in section 004 above. In making the final determination as to creation of a negotiated rulemaking committee, this agency and its agency director will apply the criteria set out in 003 above.

007.01 If, after such a determination, the agency decides that a negotiated rulemaking procedure is feasible, it shall establish a negotiated rulemaking committee as provided in these regulations. The committee will negotiate issues and develop proposed rules for use by the agency in formal rulemaking.

007.02 If, after such a determination, the agency decides not to establish a negotiated rulemaking committee, the agency shall:

007.02A Notify the person who commented on, applied for membership on or nominated persons for membership on the particular negotiated rulemaking committee of the reasons for the decision not to establish such a committee.

007.02B Publish notice of the decision not to establish the particular negotiated rulemaking committee in a newspaper having general circulation in the state, and, as appropriate, in other newspapers and publications.

008 Negotiated Rulemaking Committee; Membership. All members of a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members.

008.01 Members of a negotiated rulemaking committee may include:

008.01A A person designated by the agency to represent the agency. This person shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

008.01B Persons selected by the agency as willing and qualified to represent the

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interests that will be significantly affected by the proposed rule.

008.01C Persons contacted and recruited by the negotiated rulemaking committee itself by consensus as essential to the success of the negotiated rulemaking process.

008.01D Persons selected by the negotiated rulemaking committee by consensus upon committee review of a petition for membership or nomination as set out in subsection 008.02 below.

008.02 Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee.

008.02A Each petition or nomination for committee membership shall be in writing and be submitted to the negotiated rulemaking committee by delivering or mailing the same to the agency. All such petitions or nominations shall include:

008.02A(1) Identification of the applicable negotiated rulemaking proceeding.

008.02A(2) The name of the petitioner or nominee, and a description of the interests the person represents.

008.02A(3) Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent.

008.02A(4) A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration.

008.02A(5) An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests

of the person submitting the petition or nomination.

008.02B Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may use Attachment 2. Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may also do so by letter, provided that the letter contains the information set forth above.

008.02C Upon receiving a petition for membership or nomination to a particular negotiated rulemaking committee, the committee in question shall decide, by consensus at its next meeting, whether or not to expand its membership.

009 Negotiated Rulemaking Committee; Operation. A negotiated rulemaking committee established under these rules shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

009.01 A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee consistent with these rules and the pertinent Nebraska statutes.

009.02 The agency shall provide appropriate administrative support to a negotiated rulemaking committee including technical assistance and support.

009.03 The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members of the committee and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

009.04 If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the agency a report containing the proposed rule.

009.05 If a negotiated rulemaking committee does not reach a consensus on the propose

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rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved . The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations or materials.

010 Facilitators; Selection; Duties. A facilitator shall be selected to assist a negotiated rulemaking committee with its duties.

010.01 The agency may nominate a person to serve as a facilitator for the negotiations of a negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If the committee does not approve the substitute nomination of the agency for facilitator, the committee shall select, by consensus, a person to serve as facilitator.

010.02 The agency may employ or contract for an organization or an individual to serve as a facilitator for a negotiated rulemaking committee or the agency may use the services of a state employee to act as a facilitator. A person designated by the agency to represent it on a negotiated rulemaking committee with respect to substantive issues may not serve as the facilitator. A facilitator shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The agency shall determine whether a person under consideration for facilitator has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

010.03 A facilitator approved or selected by a committee shall:

010.03A Preside at the meetings of the committee in an impartial manner.

010.03B Impartially assist members in conducting discussions and negotiations and achieving consensus.

010.03C Manage the keeping of minutes and records.

011 Negotiated Rulemaking Committee: Expenses. Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, the agency may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in Neb. Rev. Stat. §§ 81-1174 through 81-1177 and a reasonable per diem rate of compensation if:

011.01 The committee member certifies a lack of adequate financial resources to participate on the committee using Attachment 3; and,

011.02 The agency determines that the committee member's participation is necessary to assure an adequate representation of the interests of the members.

012 Grants or Gifts. The agency may accept grants or gifts from any source to fund a negotiated rulemaking process if:

012.01 Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public.

012.02 The grant or gift is given to and accepted by the agency without placing any condition on the membership of a committee or the outcome of the negotiated rulemaking process.

012.03 There is a consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

013 Negotiated Rulemaking Committee: Termination. A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the agency pursuant to the APA, unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

014 Negotiated Rulemaking Procedure: Judicial Review. Any action of the agency relating to establishing, assisting or terminating a negotiated rulemaking committee under the Negotiated

Rulemaking Act shall not be subject to judicial review, except that nothing in this section shall bar judicial review if such judicial review is otherwise provided by law.

FILED

MAY 22 1996

SECRETARY OF STATE

By *Sharon Lippman*

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APPROVED

MAY 22 1996

Don Stenberg

MINNEAPOLIS

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APPROVED
DON STENBERG
ATTORNEY GENERAL

MAR 28 1996

BY *Don Stenberg*
Assistant Attorney General

BEFORE THE NEBRASKA COMMISSION ON PUBLIC ADVOCACY

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above]:

4. The facts surrounding each of the issues listed in paragraph 3 above are as follows:

5. Establishment of a negotiated rulemaking committee would be in the public interest under each of the following criteria based upon the information the petitioner hereby submits:

A. There is a need for rulemaking on the issue(s) identified above because:

B. There are a limited number of identifiable interests that will be significantly affected by the rule, including the following interests:

C. There is a reasonable likelihood that a negotiated rulemaking committee can be convened with a balanced representation of people (1) who can adequately represent the interests identified above and (2) are willing to negotiate in good faith to reach a consensus on the proposed rule, as shown by the following:

D. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time because:

E. The use of this procedure will not unreasonably delay formal rulemaking and issuance of a final rule because:

F. [Option for response by petitioner] The Nebraska Commission on Public Advocacy should commit its resources, including technical assistance, to such a committee because:

G. [Option for response by petitioner] The Nebraska Commission on Public Advocacy should, to the maximum extent possible consistent with its legal obligations, use a consensus of such a committee as the basis for a rule to be adopted under the Administrative Procedure Act because:

6. The following persons will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this petition:

7. The following persons may be willing and qualified to represent the interests that will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this petition:

8. Petitioner offers the following additional information for use by this agency in consideration of this request [if any]:

9. Petitioner has attached the following documents in support of this request [list all documents attached]:

Dated this _____ day of _____, 19 _____.

Signature of Petitioner

List Petitioner's Name [typed or printed]

List Petitioner's Full Mailing Address

List Petitioner's Telephone Number [including area code]

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ATTACHMENT 2--SAMPLE APPLICATION FOR MEMBERSHIP
BEFORE THE NEBRASKA COMMISSION ON PUBLIC ADVOCACY

In the Matter of the Negotiated)	
Rulemaking Committee for)	Application/Nomination
the Nebraska Commission on Public)	for Membership on the
Advocacy, _____ Neb. Admin. Code _____)	Committee.

APPLICATION FOR MEMBERSHIP

1. The undersigned person hereby applies for membership on the above-referenced negotiated rulemaking committee proposed by this agency.

Name of applicant (typed or printed)

Full address of applicant

Applicant's telephone number (including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiated rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interests listed above because:

5. The applicant has attached the following documents in support of the application:

6. By signing this application, the applicant hereby certifies that he or she will represent the interest identified above to the best of his or her ability in the negotiation process, and that he or she is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee.

Signature of Applicant Date _____

NOMINATION FOR MEMBERSHIP

1. The undersigned person hereby nominates the following person for membership on the above-referenced negotiated rulemaking committee proposed by this agency.

Name of nominee (typed or printed)

Full address of nominee

Nominee's telephone number (including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiated rulemaking committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the parties and interests listed above because:

5. The nominating party has attached the following documents in support of the nomination:

6. The nominating party believes that the nominee will represent the interest identified above to the best of his or her ability in the negotiation process, and that the nominee is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee because:

Signature of Nominating Party

Date _____

Name of Nominating Party (printed or typed)

Full Address of Nominating Party

City, State, Zip Code

Telephone Number of Nominating Party
(including area code)

ATTACHMENT 3--SAMPLE CERTIFICATION OF FINANCIAL NEED

BEFORE THE NEBRASKA COMMISSION ON PUBLIC ADVOCACY

In the Matter of the Negotiated)
Rulemaking Committee for)
the Nebraska Commission on Public) Certification of
Advocacy, _____ Neb. Admin. Code _____) Financial Need

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

COMES NOW the undersigned, being first duly sworn, and hereby states and certifies as follows:

1. I am a member of the above-referenced negotiated rulemaking committee created by the Nebraska Commission on Public Advocacy.
2. In connection with my duties on that committee, I represent [insert name of the appropriate identified interest].
3. In connection with my duties on that committee, I have incurred or will incur expenses and/or other costs.
4. I certify that I have a lack of adequate financial resources to serve on the above-referenced negotiated rulemaking committee, and that I need financial assistance from this agency in order to serve.

Signature of Affiant

Subscribed and sworn to before me this _____ day of _____, 19 _____.

Notary Public

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CERTIFICATE OF ADOPTION

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

I, _____, _____, certify that the attached are true
 (Name) (Position)
and correct copies of Rules and Regulations of the Nebraska Commission on Public Advocacy,
are new regulations as having been adopted after a public hearing held on the _____
day of _____, 1996, having given notification of publication in a
newspaper having general circulation of the State of Nebraska.

Dated this _____ day of _____, 1996.

Name

Position